

1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

(3) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

**(b) Effect of revised table**

If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa-11(b)(2) of this title, file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

**(c) State limitations of actions**

If a petition is filed under section 300aa-11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date (1) an election is made under section 300aa-21(a) of this title to file the civil action or (2) an election is made under section 300aa-21(b) of this title to withdraw the petition.

(July 1, 1944, ch. 373, title XXI, §2116, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3769; amended Pub. L. 100-203, title IV, §4302(b)(2), Dec. 22, 1987, 101 Stat. 1330-221; Pub. L. 101-239, title VI, §6601(m)(1), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101-502, §5(e), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102-168, title II, §201(d)(2), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 103-66, title XIII, §13632(a)(1), Aug. 10, 1993, 107 Stat. 645.)

CODIFICATION

In subsec. (a)(1) to (3), “October 1, 1988” and “October 1, 1988,” substituted for “the effective date of this subpart” on authority of section 323 of Pub. L. 99-660, as amended, set out as an Effective Date note under section 300aa-1 of this title.

PRIOR PROVISIONS

A prior section 2116 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-66 substituted “or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa-11(b)(2) of this title, file” for “such person may file”.

1991—Subsec. (c). Pub. L. 102-168 substituted “or (2)” for “, (2)” and struck out “, or (3) the petition is considered withdrawn under section 300aa-21(b) of this title.”

1990—Subsec. (a)(1). Pub. L. 101-502, §5(e)(1), substituted “28 months” for “24 months” and inserted before comma at end “and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine”.

Subsec. (c). Pub. L. 101-502, §5(e)(2), substituted “and ending on the date (1) an election is made under section 300aa-21(a) of this title to file the civil action, (2) an election is made under section 300aa-21(b) of this title to withdraw the petition, or (3) the petition is considered withdrawn under section 300aa-21(b) of this title” for “and ending on the date a final judgment is entered on the petition”.

1989—Subsec. (c). Pub. L. 101-239 substituted “300aa-11 of this title” for “300aa-11(b) of this title”.

1987—Subsec. (a). Pub. L. 100-203 substituted “effective date of this subpart” for “effective date of this subchapter” in pars. (1) to (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102-168, set out as a note under section 300aa-11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101-502, set out as a note under section 300aa-11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101-239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101-239, set out as a note under section 300aa-10 of this title.

**§ 300aa-17. Subrogation**

**(a) General rule**

Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrogated<sup>1</sup> to all rights of the petitioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

**(b) Disposition of amounts recovered**

Amounts recovered under subsection (a) of this section shall be collected on behalf of, and deposited in, the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(July 1, 1944, ch. 373, title XXI, §2117, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3770; amended Pub. L. 100-203, title IV,

<sup>1</sup> So in original. Probably should be “subrogated”.

§ 4307(7), Dec. 22, 1987, 101 Stat. 1330-225; Pub. L. 101-239, title VI, § 6601(m)(2), Dec. 19, 1989, 103 Stat. 2291.)

#### AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 substituted “the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26” for “the trust fund which has been established to provide compensation under the Program”.

1987—Subsec. (a). Pub. L. 100-203 struck out par. (1) designation before “Upon” and struck out par. (2) which read as follows: “In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 300aa-15 of this title for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1).”

#### EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101-239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101-239, set out as a note under section 300aa-10 of this title.

#### **§ 300aa-18. Repealed. Pub. L. 100-203, title IV, § 4303(d)(2)(B), Dec. 22, 1987, 101 Stat. 1330-222**

Section, act July 1, 1944, ch. 373, title XXI, § 2118, as added Nov. 14, 1986, Pub. L. 99-660, title III, § 311(a), 100 Stat. 3771, provided for annual increases for inflation of compensation under subsections (a)(2) and (a)(4) of section 300aa-15 of this title and civil penalty under section 300aa-27(b) of this title.

#### **§ 300aa-19. Advisory Commission on Childhood Vaccines**

##### **(a) Establishment**

There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

(1) Nine members appointed by the Secretary as follows:

(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control

and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of October 1, 1988. The members of the Commission shall select a Chair from among the members.

##### **(b) Term of office**

Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

##### **(c) Meetings**

The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission present at the meeting.

##### **(d) Compensation**

Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS-18 of the General Schedule for each day (including travel-time) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for employees serving intermittently.

##### **(e) Staff**

The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

##### **(f) Functions**

The Commission shall—

(1) advise the Secretary on the implementation of the Program,

(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

(3) advise the Secretary in implementing the Secretary's responsibilities under section 300aa-27 of this title regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including